IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLIATION NO.3717 OF 2004
IN
CRIMINAL APPLICATION NO. 3850 OF 1999

Indian Express Newspapers
(Bombay) Ltd. ...Petitioner.

V/s

Mr. Ravi Pati Vijay Tata
and another. ...Respondents.

Mr. S.R. Chitnis with Ms. Poorvi Kamani with Mr. Vinayak Shete and N. Prabhu for the petitioner.

Mr. D.P. Adsule, APP for the State.

CORAM: V.M.KANADE,J.
DATE: 3rd March, 2005

P.C.:

1. Heard the learned Counsel for the petitioner.

2. Petitioner is the complainant in Criminal Case No. 314/S/2003 pending before the learned Additional Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai which is filed under section 138 of the Negotiable Instruments Act against Century Gases and Petrochemicals Limited of which respondent No.1 is the Director.

3. It is stated in the application that after the verification of the statement of the representative of the petitioner on 27/11/1997, the process was issued

against the accused who was duly served on 2/6/1998 and the respondent No.1 appeared before the learned Magistrate on behalf of the Company through his advocate.

4. Respondent No.1 filed Criminal Application No.3850 of 1999 in this Court in which he had alleged inter alia that 51 cases have been filed against him in Mumbai and approximately 70 cases are filed against him in the State of Maharashtra under section 138 of the Negotiable Instruments Act which has caused tremendous hardship to him. It is stated in the said application that it is not possible for him to attend the Court and, therefore, all the cases may be clubbed together and may be transferred to the Court in Mumbai. It is further prayed that respondent No.1 may be exempted from appearing in all these cases until further orders. In the said application filed by respondent No.1, this Court by order dated 17/12/1999 was pleased to stay the non-bailable warrants issued by the Metropolitan Magistrate in the cases listed in Exhibit-A to the said application. Further this Court gave an exemption to respondent No.1 from appearing personally in all those cases pending before the concerned Magistrates until further orders.

5. The grievance of the petitioner in the present case is that after having obtained the interim order, no steps were taken by respondent No.1 herein to serve all the respondents in Criminal Application No.3850 of 1999 and, as a result of the ex parte order which was passed in favour of respondent No.1, all the criminal cases including the case of the petitioner are stayed. Petitioner, therefore, prays that either the said order be modified or the interim relief be vacated as the respondent No.1 in spite of service is not appearing before this Court after having obtained the impugned order.

6. Petitioner has filed affidavit of service which is taken on record. Petitioner was also directed to serve the copy of the notice on the advocate appearing on behalf of respondent No.1. However, the advocate on record in Criminal Application No. 3850 of 1999 has stated that he has no instructions in the matter for last number of years from his client and, therefore, he is not in a position to appear on his behalf. The said note which is made by respondent No.1's counsel on the advocate's notice dated 28/2/2005 is annexed to the affidavit of service filed by the petitioner dated 2/3/2005.

7. In the present case, it is quite clear that respondent No.1 after having obtained interim orders from this Court has not taken further steps to serve all the respondents in Criminal Application No.3850 of 1999 and has not remained present in this application. Respondent No.1 has also not instructed his advocate after interim orders were passed in his favour in Criminal Application No. 3850 of 1999 and has obviously taken disadvantage of the interim orders which were passed in his favour.

8. Under the circumstances, there is no other alternative but to vacate the interim orders which are passed by this Court by order dated 17/12/1999. Accordingly the interim orders passed by this Court vide order dated 17/12/1999 in Criminal Application No. 3850 of 1999 stand vacated.

V.M. KANADE, J.